IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPAHY PETITION NO.859 OF 1997

Maharashtra State Financial Corpn.
..Petitioner.

Vs.

M/s. Jayanbti Business Machines Ltd.
..Company.

Ms.Deepa Mani i/by S.K.Srivastav for the Petitioner.

CORAM : A.M. KHANWILKAR, J.
DATED : 21/7/2005.

P.C.:

1. Heard counsel for the petitioner. None appears for the respondent though served. No reply has been filed opposing this petition.

2. The case of the petitioner is that the respondent company has approached the petitioner for discounting of Bills of Exchange. As per the request of the company, the petitioner extended finance to the respondent company to the extent of Rs.4.30 Crores. The respondent company paid to the tune of Rs.20/- lacs. However, the respondent company failed to discharge its obligation in repaying the balance amount inspite of the repeated reminders. The respondent company did not pay the amount except sum of Rs.20/- lacs which was adjusted

towards the accrued interest by the petitioner. After sending repeated reminders, the petitioner sent statutory notice on 26.3.1997 which has been duly served on the respondent company. The claim amount in the statutory notice as of March,1997 is in the sum of Rs.4,62,28,362/-. Inspite of statutory notice served on the respondent company, no reply was sent by the respondent company nor further payment was made to the petitioner. In that sense, the legal presumption arising against the respondent that the company is unable to pay its debt, remained unrebutted. Eventually the petitioner filed the present petition under Section 433 and 434 of the Companies Act in Sept.1997. The petition was admitted on 7.12.1998 after hearing both the parties. The petition has been duly advertised and published,. Even thereafter, the respondent company has not made any attempt to repay the amount to the petitioner. As mentioned earlier, no reply has been filed controverting the assertions made in the petition. Thus understood, the legal presumption against the respondent company remain unrebutted. If it is so, the only course to this court in the facts situation of the present case is to allow the petition in terms of prayer clause (a) and (b). Ordered accordingly.

(A.M. KHANWILKAR,J.)